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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL No.518/2001

APPELLANTS 1 Kartam Joga, s/o Kartam Kona, aged 40 years

2. Kartam Kosa, s/o Kartam Muswa, aged about 26 years, both belong to Muria Caste, R/o village Misma, P.L. Dornapal, Distt. Dantewada

Versus

RESPONDENT State of Chhattisgarh through P.S. Dorbnapal, Distt. Dantewada (South Bastar)

Appearance:

Shri Ramkrishna Sharma, counsel for the appellants.

Smt. Anju Ahuja, Dy.Govt. Advocate, for the State.

DB: Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, J,J,

ORAL JUDGMENT
(01.8.2007)

L.C.Bhadoo, J,

Heard.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 03.4.2001 passed by III Addl. Sessions Judge, Jagdalpur (Bastar), in Sessions Trial No.463/2000 whereby the learned Addl. Sessions Judge, after

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आदेश पत्रक (पूर्वानुबद्ध)

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	holding the accused appellants guilty for committing murder of Kartam Lakha, convicted the accused Kartam Kosa for commission of murder u/s 302 read with section 34 I.P.C. and sentenced him to undergo life imprisonment and convicted the other accused Kartam Joga for commission of offence u/s 302/34 and sentenced to undergo life imprisonment and also convicted him u/s 25(1)(b) & section 27(1) of the Indian Arms Act, and sentenced to undergo R.I. for 1 year & 3 years respectively. **(2)** The case of the prosecution in brief is that at about 9 -10 p.m. in the night of 04.10.2000, Kartam Lakha was going from Nayapara to his village. When he reached near the girls hostel, both the accused persons came from opposite side carrying Axe and butchers' knife in the hands and attacked him with those weapons. The incident was witnessed by Kartam Deva (P.W.2) and Oyam Deva (P.W.3). The accused persons after attacking Kartam Lakha, fled from the scene of occurrence. The eye witnesses Kartam Deva and Oyam Deva came to their residence and did not disclose to any body and in the morning they went to the site and saw that Kartam Lakha was found dead. Therefore, a meeting was convened in the village and Kartam Dulla lodged the report in Police Station Dornapal. The S.H.O., Dornapal registered the F.I.R. Ex.P.1 and left for scene of occurrence, he prepared the inquest Ex.P.2 on the body of deceased. While in police custody, the accused Kartam Kosa gave a memorandum Ex.P.3 regarding	

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आदेश पत्रक (पूर्वानुबद्ध)

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the Axe and in pursuance of that, the weapon of offence i.e., Axe was seized under Ex.P.5. Accused Joga also gave memorandum Ex.P.7 and in pursuance of that, a butcher's knife (about 8" in length) was seized under Ex.P.4. The body of deceased was sent to Primary Health Center, Dornapal for postmortem under Ex.P.9 where Dr.Uttam Kaushik (P.W.8) conducted the postmortem and prepared the report Ex.P.9. He opined that the death is caused by acute cardio respiratory arrest due to hemorrhage and shock on account of cutting of trachea and right half of the great vessels and right sided 1st, 2nd and 3rd vertebras fracture and dislocation alongwith occipital region of head. There was a linear fracture. After completion of investigation, the charge sheet was filed in the Court of J.M.F.C., Sukma, who in turn committed the case to Sessions Judge, Jagdalpur, from where the learned Addl. Sessions Judge received the case on transfer. The prosecution in order to establish the charges against the accused persons examined 8 witnesses. On the other hand, statement of the accused was recorded u/s 313 Cr.P.C., in which he denied the material appearing against them and pleaded that they are innocent and have been falsely implicated in the crime.

(3) The learned Addl. Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused persons as aforesaid.

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आदेश पत्रक (पूर्वानुबद्ध)

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(4) We have heard Mr. Ramkrishna Sharma, counsel for the appellants and Mrs.Anju Ahuja, Dy.G.A. for the State.

(5) Mr.Sharma argued that P.W.2 Kartam Deva & P.W.3 Oyami Deva have been examined as eye witnesses but from their evidence in the cross examination, it is evident that when they were sleeping at their residence, they were informed about the incident, on which they went to the site and saw that body of Kartam Lakha was lying there, therefore, they have not witnessed the crime. He further argued that P.W.4 Kartam Joga and P.W.6 Kwasi Bhima in their cross examinations, have stated that the accused persons made extra judicial confession before them in Panchayat but whereas they were witnesses of the memorandum and seizure memo only and their statement u/s 161 Cr.P.C. regarding Panchayat and making extra judicial confession by the accused was not recorded, therefore, their evidence cannot be relied on.

(6) On the other hand, learned counsel for the State supported the judgment of the trial Court.

(7) In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the record. P.W.2 Kartam Deva in his examination-in-chief has stated that on the fateful day he was at his residence. He heard the cries of somebody from the site of school, therefore, he went to that site and saw that accused Kartam Kosa was assaulting the deceased

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आदेश पत्रक (पूर्वानुबद्ध)

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	with Axe whereas the second accused Kartam Joga had caught Kartam Kosa and he (Kartam Joga) attacked the deceased with Axe. Therefore, this witness has witnessed that accused Kartam Kosa attacked with Axe, similarly Kartam Joga also attacked with Axe whereas the prosecution case is that Kartam Kosa attacked with Axe and Kartam Joga attacked with butchers' knife. More over, this witness has stated that the second accused (Kartam Joga) caught hold of Kartam Kosa. He has not stated that accused Kartam Joga has caught hold of the deceased Lakha and in the cross examination this witness has stated that he was sleeping in his house, the daughter of deceased Lakha came and informed him that her father was lying dead on the way at Hostel, therefore, he alongwith Boga went to the place and saw that Lakha was lying dead. Therefore, in view this evidence, his evidence in examination-in-chief that he saw the accused attacking the deceased stands falsified. Similarly, Oyami Deva (P.W.3) in his examination-in-chief has stated that the accused Joga was carrying Axe and Kosa was carrying butchers knife whereas as per the prosecution case, butchers' knife has been recovered from accused Joga and axe has been recovered from accused Kosa. Therefore, his evidence does not inspire the confidence of this court. More over, in the cross examination, he has also stated that at the time of incident he was sleeping in the house, on the next day, the daughter of the deceased came and informed that somebody has murdered her father, therefore, he	

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आदेश पत्रक (पूर्वानुबद्ध)

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	went to the site to see the body of Lakha. In view of the above, this witness cannot be said to be the eye witness to the incident. As far as the evidence of P.W.4 Kartam Joga & P.W.6 Kwasi Bhima is concerned, they are witnesses to the seizure memo and memorandum but in the examination-in-chief, they have stated that Panchayat was convened and in the said Panchayat, the accused persons made extra judicial confession. However, their statement u/s 161 Cr.P.C. was not recorded, therefore, it cannot be said that they were witnesses to the extra judicial confession made by the accused persons in their presence before the Panchayat. Therefore, virtually there is no evidence on record to connect the accused persons with the crime in question. In view of the above, the prosecution has utterly failed to establish the charge against accused persons regarding commission of murder of Kartam Lakha. The conviction of the accused Kartam Kosa & Kartam Joga u/s 302 read with section 34 IPC cannot be maintained and they are acquitted of the said charge. **(8)** Now coming to the conviction of the accused Joga u/ss 25(1)(b) & 27(1) of the Indian Arms Act, in view of what has been discussed above, the prosecution has not been able to establish this offence against this accused. Therefore, there is no evidence that this accused attacked with butcher's knife, as such, his conviction u/s 27(1) of the Act, cannot be sustained. As far as the conviction u/s 25(1)(b) of the Act is concerned, it will be proper to	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

refer to the notification No.6312-6552-II-B(i) dated 22nd November 1974 issued by the State Govt. of M.P. under the provisions of Section 4 of the Indian Arms Act, which reads as under:

> Whereas the State Government is of the opinion that having regard to the prevailing conditions in the State of Madhya Pradesh, it is necessary and expedient in the public interest that acquisition, possession and carrying of sharp edged weapons with a blade more than 6 inches long 2 inches wide and spring actuated knives with a blade of any size in public places should also be regulated.

The said notification was issued u/s 4 of the Arms Act. Learned Addl. Sessions Judge while convicting the accused Kartam Joga u/s 25(1)(b) of Arms Act, has observed that the butchers' knife was 8" in length, therefore, the said notification is attracted but the requirement of notification is that the size of the sharp edged weapon with a blade must be 6" in length and 2" in wide. In the present case, the width of the butcher's knife has not been given nor it has been taken into consideration by learned Addl. Sessions Judge in Para 19 of the judgment. More over, learned counsel for the petitioner argued that such kind of weapons are commonly found in the village side which are being used in the houses for domestic purposes. Therefore, in view of the above, since the weapon recovered was not covered under the said notification, the accused is entitled for benefit of doubt.

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	(9) In the result, appeal filed by the appellants succeeds. The conviction and sentences imposed against them are set aside. They are acquitted of the charges u/s 302 r/w 34, I.P.C. The accused Joga is also acquitted of the charge u/ss 25(1)(b) & 27(1) of Indian Arms Act. It is stated that they are in detention since 2000. Therefore, there are directed to be released forthwith, if not required in any other case. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **SUNIL KUMAR SINHA** **Judge**

Rao

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